

TENTH CIRCUIT

# Legal Advisor

Jerry Hill, State Attorney



*Volume 15, Number 7*

*July, 2001*

## NEW LAWS FOR 2001 by Wayne Durden

A summary of new criminal laws which have already become effective is set forth below. The laws becoming effective in October will be included in the September Legal Advisor. Copies of any of these new laws may be obtained from Felony Director Wayne Durden at 534-4834.

Effective March 29, 2001, photographs, videos or audio recordings of autopsies are not subject to public records disclosure per Chapter 119, Florida Statutes. This law (as yet unnumbered in Florida Statutes) is not a model of clarity. It could be interpreted as applying only to such materials in the custody of the medical examiners themselves or could be interpreted as applying to law enforcement agencies and prosecutors who have custody of copies of such materials. Consult your agency legal advisor for an opinion as to whether or not to release autopsy materials upon a public records request as improper disclosure is a third degree felony. 01-01, Laws of Florida.

Effective June 5, 2001, a new law at F.S. 316.066(3)(c), specifically prohibits public record access to information contained in motor vehicle crash reports for 60 days after a report has been filed, with a number of exceptions. Third degree felony crimes are created for improper disclosure of such information or seeking disclosure of such information without proper credentials. Please consult your department's legal advisor regarding application of this new law. 01-163, Laws of Florida.

Effective July 1, 2001, Chapter 893, Florida Statutes, Controlled Substances, has been amended in several respects. Hydrocodone in certain dosage units is now a Schedule III substance. The definition of "mixture" has been amended in F.S. 893.135(6), to make it easier with certain substances to establish threshold amounts for trafficking offenses. The following substances have been added to F.S. 893.03(1), as Schedule I substances: 4-methoxymethamphetamine, 1,4-butanediol, gamma-butyrolactone (GBL), and gamma-hydroxybutyric acid (GHB). (1,4-butanediol and GHB were previously in Schedule II). Schedule III is amended to include drug products containing GHB. New trafficking offenses for GBL, 4-methoxymethamphetamine and LSD have been created at F.S. 893.135(i), (k), and (l).. **NOTE:** As a result of these amendments, some statutory references for trafficking offenses have been changed. Refer to current versions of Chapter 893, Florida Statutes for charging purposes. 01-55 and 01-57, Laws of Florida.

Effective July 1, 2001, the felony level of crimes may be enhanced upward by one degree, i.e. an

F3 becomes an F2, if it can be established that a defendant used a police scanner to facilitate commission of a crime per F.S. 843.167. 01-127, Laws of Florida.

Effective July 1, 2001, the offense of hiring or leasing with intent to defraud applies to rent-to-own agreements if the store retains title to the property during the time the contract is in effect per F.S. 812.155. 01-141, Laws of Florida. **The August Legal Advisor will address what evidence will be required to prove these cases.**

Effective May 25, 2001, a burglary is once again committed if a person enters a place lawfully and then remains inside to commit an offense, provided we can establish even circumstantially that consent was withdrawn. Thus F.S. 812.015, has been created and F.S. 810.02, Burglary, has been amended. (This undoes a Florida Supreme Court case holding otherwise.) 01-58, Laws of Florida.

Effective July 1, 2001, there have been a number of amendments to Florida's property crimes laws. "Cargo" is defined in F.S. 812.012, with criminal penalties set forth in F.S. 812.014, for theft of "cargo" such as trucks or vessels and their freight. Theft of "emergency medical equipment" is a second degree felony per F.S. 812.014, under certain circumstances. There are several changes made to F.S. 812.015, Retail Theft. The definition of "retail theft" has been amended to include UPC (Uniform Price Code) labels, and the definition of "antishoplifting or inventory control device" has been expanded as well. New retail theft crimes apply to persons acting in concert with others to deprive merchants, which allow for the aggregation of the value of multiple items of property taken, under specified circumstances. F.S. 812.0195, creates the new crime of "dealing in stolen property by use of the internet" and provides penalties. F.S. 812.017, creates the new crime of "use of a fraudulently obtained or false receipt" and provides misdemeanor penalties. F.S. 817.625, provides a new crimes involving the improper use of "scanning devices" ("skimmers") or "re-encoders", as defined, to obtain credit card information and then transfer the data to blank charge cards to facilitate fraud. Chapter 831, Florida Statutes has been amended as relates to counterfeiting to include "payment instruments" such as checks or notes. Finally, Florida law now provides at F.S. 812.015(5)(b), that a merchant or merchant's employee who apprehends a shoplifter may legally provide only a work address and not a home address to investigating law enforcement officers. 01-115, Laws of Florida.

Effective July 1, 2001, there are a number of amendments made to statutes relating to computers or computer use. "Child pornography" is defined at F.S. 847.001(1). "Harmful to minors" is re-defined at 847.001(4). New crimes of transmitting child pornography by electronic means and transmitting material harmful to minors by electronic means are created and may be found at F.S. 847.0137, and 847.0138. F.S. 847.0139, has been created to provide civil immunity to any person who reports child pornography crimes to law enforcement. Also "computer contaminant", "access", "computer network", "computer program or computer software", "computer services", "computer system", "data" and "intellectual property" are defined in F.S. 815.03. New crimes involving the introduction of computer contaminants (e.g. viruses), disrupting computer services, or destroying or damaging computers are created and may be found at F.S. 815.06. 01-54, Laws of Florida.

Effective July 1, 2001, F.S. 817.568, Identity Theft, has been amended, affecting penalties; providing that venue for prosecution of identity theft may be commenced in any county in which an element of the crime occurred, including where the victim generally resides; and extending the statute of limitations for prosecution of a crime of identity theft from three years to five years. 01-233, Laws of Florida.

Effective June 5, 2001, F.S. 951.221, is created to provide a new third degree felony for "sexual misconduct" not rising to the level of sexual battery between detention facility staff and inmates. This new

law provides that an inmate's consent is not a defense to this crime.01-92, Laws of Florida.

Effective July 1, 2001, Florida's Evidence Code, F.S. 90.404(2), is amended to allow (hopefully) for liberal admission of prior acts of child molestation in a child sex abuse trial. 01-254, Laws of Florida.

Effective July 1, 2001, Chapter 847, Florida Statutes, Obscenity, is amended to provide definitions for "adult", "adult bookstore", "adult theater", "unlicensed massage establishment", "special cabaret", "masochism", "sadism", "sexually oriented material", and "specified sexual activities". A new third degree felony is created at F.S. 847.0134, to apply to adult establishments that operate within 2500 feet of a school unless legally operating or permitted to operate by July 1, 2001. 01-177, Laws of Florida.

Effective July 1, 2001, laws relating to Domestic Violence have been amended which will affect the disposition of offenders in court. This same law amends F.S. 784.03(2), to provide that a third degree felony is committed if a person commits simple battery and has only one prior battery, aggravated battery or felony battery. Previously two priors were required before a simple battery became a felony. 01-50, Laws of Florida.

Effective July 1, 2001, Chapter 322, Florida Statutes, Drivers Licenses, is amended as relates to underage (under 21) drinking and driving, mainly concerning the suspension of a person's driving privilege. However, the amendments provide that temporary permits issued after a citation is issued are not valid until twelve hours thereafter and that an officer may deliver an underage person to an "addictions recovery facility" instead of waiting for the underage person's parents to respond. 01-144, Laws of Florida.

Effective July 1, 2001, F.S. 934.215, is created to establish a new third degree felony when a two-way communication device is used to facilitate the commission of some other felony. 01-114, Laws of Florida.

Effective May 31, 2001, F.S. 817.564, has been amended to provide civil and criminal immunity to law enforcement officers and informants or others acting under the control of law enforcement officers for the possession or distribution of imitation controlled substances during reverse sting operations. 01-95, Laws of Florida.

Effective July 1, 2001, the gang enhancement statute, F.S. 874.04, which was previously declared unconstitutional by the Florida Supreme Court because it criminalized mere membership, is resurrected and will again enhance by one felony degree the level of a crime committed if the court finds that the crime was committed for the purpose of "benefitting, promoting or furthering the interests of a criminal street gang". 01-126, Laws of Florida.

Effective July 1, 2001, PRR (Prison Releasee Reoffender) sanctions as set forth in F.S. 775.082, once again apply to burglary of a residence (undoing a Florida Supreme Court opinion that said PRR sanctions only applied to burglary of an occupied residence). PRR sanctions also now apply to prisoners released from prison in any state, not just Florida, and now apply to escapees from Florida or any other jurisdiction. 01-239, Laws of Florida.

Effective May 31, 2001, a new law (as yet unnumbered in Florida Statutes) mandates the release of background information concerning applicants for law enforcement positions from former employers to hiring law enforcement agencies with whom applicants seek employment. 01-94, Laws of Florida.

Effective May 31, 2001, F.S. 901.252, is amended to provide that a law enforcement officer may patrol property and facilities owned or leased by a municipality even though outside the jurisdictional limits of the municipality. 01-105, Laws of Florida.

### **PLEASE NOTE!**

Due to an error last month by the Legal Content Editor, the author of the article on detaining passengers was omitted. That informative article was prepared by Sherri Scarborough who is the Chief of Felony Division One.

\*\*\*\*\***FROM THE COURTS**\*\*\*\*\*

#### **OFFICERS ENTERED HOME TOO QUICKLY AFTER KNOCKING**

The defendant was charged with possession of cocaine and filed a motion to suppress. The facts on which the motion was based were that around 5:30 a.m. one morning officers went to the defendant's home to execute a search warrant. One officer knocked and announced the officers' presence and purpose. Hearing nothing the officers gained entry with a battering ram. No more than ten seconds elapsed between the first knock and the entry. The trial court denied the motion to suppress, and the defendant was convicted as charged. On appeal, the Second District reversed, holding that under the circumstances of this case the officers did not wait for a reasonable amount of time after knocking and announcing their presence before they made a forced entry. *Richardson v. State*, 26 FLW D1191 (Fla. 2d DCA May 9, 2001).

#### **FACTS ESTABLISHED A BATTERY ON A LEO**

The defendant was charged with aggravated battery on a law enforcement officer. At her trial, the evidence established that she drove her car at a police officer. In order to avoid being run over, the officer put out his hands and pushed off from the vehicle as it approached. The defendant was convicted of battery on a law enforcement officer. On appeal, the Fourth District affirmed, holding that the evidence established the touching element of battery because the contact between the officer and the vehicle resulted from the defendant's action. As the Court put it, "The fact that the victim is able to block the thrust of the swordsman with his own arm, and thereby avoid the wound, does not make the thrust any less a battery." *Bryant v. State*, 26 FLW D1406 (Fla. 4<sup>th</sup> DCA May 30, 2001).

**EVIDENCE OF WHERE RESIDUE WAS FOUND SUPPORTED A DRUG CONVICTION**

The defendant was charged with possession of heroin. At his trial, the evidence established that heroin residue was found on a tiny plastic bag concealed in the defendant’s shoe. The defendant was an admitted heroin addict. He was found guilty as charged. On appeal, the Third District initially reversed the conviction, but on rehearing, it affirmed, holding that the packaging in which the heroin residue was found was not an object which would have a common legitimate use. *Gilchrist v. State*, 26 FLW D1416 (Fla. 3d DCA June 6, 2001).

**VICTIM’S REACTION TURNED VEHICLE THEFT INTO A ROBBERY**

The defendant was charged with robbery. At his trial, the evidence established that he stole the victim’s truck from the parking lot of a convenience store. When the victim observed the defendant begin to drive slowly away, he grabbed hold of the driver’s side view mirror and attempted to reach in the window to stop the defendant or the truck. He was unsuccessful and jumped off as the truck approached a major highway because he was afraid of being hurt. The defendant was convicted as charged, but the court granted a motion for judgment of acquittal and reduced the conviction to attempted robbery. On appeal, the Fifth District reversed and reinstated the jury’s verdict, holding that the State had sufficiently proved that the defendant used force and put the victim in fear during the course of the taking of the truck. *State v. Hawkins*, 26 FLW D1489 (Fla. 5<sup>th</sup> DCA June 15, 2001).

**COURT LIMITS USE OF MUTUAL AID AGREEMENTS**

The defendant was charged with possession of marijuana and filed a motion to suppress. The facts on which the motion was based were that a Tampa police officer received information that the defendant possessed marijuana at his residence in Hillsborough County outside the city limits of Tampa. The officer investigated the tip and based on that investigation obtained a search warrant. Tampa police executed the warrant and seized marijuana. The trial court granted the motion, and the state appealed. On appeal, the state argued that a mutual aid agreement between the Tampa Police Department and the Hillsborough County Sheriff’s Office gave authority to Tampa Police to execute a search warrant outside of their jurisdiction. The Second District rejected this argument and affirmed, holding that Florida law does not authorize mutual aid agreements which purport to extend the jurisdiction of police officers in routine investigations. *State v. Allen*, 26 FLW D1574 (Fla. 2d DCA June 20, 2001).

Tenth Circuit  
**LEGAL ADVISOR**  
Staff

Jerry Hill.....Publisher  
Chip Thullbery.....Managing Editor  
Michael Cusick.....Legal Content Editor

The “**Legal Advisor**” is published by the Office of the State Attorney, Tenth Judicial Circuit, P.O. Box 9000, Drawer S.A., Bartow, FL 33831